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U.S.D.C. Atlanta

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

FEB 18 2009

JAMES M. HARTLEY, Clerk  
By: *[Signature]* Deputy Clerk

JULIAN CHRISTOPHER WHITE, )

Plaintiff, )

v. )

UNITED STATES FEDERAL BUREAU )  
OF INVESTIGATION; UNITED STATES )  
DRUG ENFORCEMENT )  
ADMINISTRATION )

Defendants. )

CIVIL ACTION FILE

NO: 1 09 - CV - 0421

**RLV**

I. INTRODUCTION

1. Plaintiff Julian Christopher White (hereinafter "Plaintiff") brings this action to redress violations of the Freedom of Information Act (hereinafter "FOIA"), 5 U.S.C. § 552, by Defendants United States Federal Bureau of Investigation (hereinafter "FBI") and United States Drug Enforcement Administration (hereinafter "DEA") in failing to provide all responsive records (and all non-exempt portions thereof) requested by Plaintiff in his FOIA requests to these federal agencies seeking agency records pertaining to his brother, Moses White III, a missing person whose whereabouts have been unknown since 1998, when he was working with the Defendants as a witness / informant.

## II. JURISDICTION

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA citizen suit provision) and 28 U.S.C. § 1331 (federal question).

## III. VENUE AND INTRA DISTRICT ASSIGNMENT

3. Venue in this Court is proper, as Plaintiff resides in Stockbridge, Georgia. See 5 U.S.C. § 552(a)(4)(B); 28 U.S.C. § 1391(e).

## IV. PARTIES

4. Plaintiff Julian Christopher White is an individual who resides in Stockbridge, Georgia.

5. Defendant United States Federal Bureau of Investigation ("FBI") is an agency of the United States, and as such, is subject to FOIA pursuant to 5 U.S.C. § 552(f).

6. Defendant United States Drug Enforcement Administration ("DEA") is an agency of the United States, and as such, is subject to FOIA pursuant to 5 U.S.C. § 552(f).

## V. LEGAL FRAMEWORK OF FOIA RELEVANT TO ALL CLAIMS

7. FOIA requires, *inter alia*, that all federal agencies must promptly provide copies of all non-exempt agency records to those persons who make a request for records that reasonably describes the nature of the records sought, and which conforms with agency regulations and procedures in requesting such records. 5

U.S.C. § 552(a)(3)(A).

8. FOIA requires federal agencies to make a final determination on all FOIA requests that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such request, unless the agency provides notice to the requester of "unusual circumstances" meriting additional time for responding to a FOIA request. 5 U.S.C. § 552(a)(6)(A)(I).

9. FOIA also requires federal agencies to make a final determination on FOIA administrative appeals that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal, unless the agency provides notice to the requester of "unusual circumstances" meriting additional time for responding to a FOIA request. 5 U.S.C. § 552(a)(6)(A)(ii).

10. FOIA expressly provides that a person shall be deemed to have exhausted their administrative remedies if the agency fails to comply with the applicable time limitations provided by 5 U.S.C. § 552(a)(6)(A)(i) - (ii). 5 U.S.C. § 552(a)(6)(c).

11. FOIA provides that any person who has not been provided the records requested pursuant to FOIA, after exhausting their administrative remedies, may seek legal redress from the federal district court to "enjoin the agency from withholding agency records and to order agency records improperly withheld from

the complainant." 5 U.S.C. 552(a)(4)(B).

12. Under FOIA, a federal agency has the burden to sustain its actions. 5 U.S.C. §552(a)(4)(B).

13. Pursuant to FOIA, this Court may assess attorney fees and litigation costs against the United States if Plaintiff prevails in this action. 5 U.S.C. § 552(a)(4)(E).

## **VI. FACTUAL ALLEGATIONS FOR PLAINTIFF'S FOIA REQUESTS**

### **Plaintiff's June 7, 2007 FOIA Request To The FBI**

14. On or about June 7, 2007, Plaintiff, by and through his counsel Daniel J. Stotter, sent a FOIA request to the FBI Record Information / Dissemination Section in Washington D.C., seeking all FBI records and files pertaining to Plaintiff's missing brother, Moses White III, from 1997 to the date of this FOIA request, and which expressly requested the FBI to forward this FOIA request to any of its component field offices that may have any responsive records for this FOIA request.

15. On or about June 22, 2007, the FBI sent Plaintiff correspondence acknowledging the agency's receipt of his June 7, 2007 FOIA request, and which further indicated that the FBI had designated his FOIA request as Request No. 1082822-000.

16. On or about May 15, 2008, the FBI sent Plaintiff the agency's decision for Plaintiff's June 7, 2007 FOIA request (Request No. 1082822-000), releasing 72

pages of responsive materials, with numerous redactions of material portions of the agency records provided, and indicating that the agency had determined that 46 pages of responsive materials would be withheld in their entirety pursuant to FOIA exemptions.

17. On or about July 5, 2008, Plaintiff, by and through his counsel, appealed the FBI's final response on FOIA Request No. 1082822-000 to the Office of Information & Privacy, U.S. Department of Justice.

18. On or about July 18, 2008, the Office of Information & Privacy, U.S. Department of Justice sent correspondence to Plaintiff indicating that his FOIA Appeal was received, and that his administrative appeal had been assigned as FOIA Appeal No. 08-2274.

19. On or about August 23, 2008, Plaintiff, by and through his counsel Daniel J. Stotter, sent supplemental information to the Department of Justice regarding FOIA Appeal No. 08-2274, indicating that Plaintiff's father, Moses White Jr., had authorized the release of any responsive records involving all of Plaintiff's father's direct communications with the FBI associated with their family's continued efforts to determine the status of Plaintiff's missing brother, Moses White III.

20. On or about August 26, 2008, Janice Galli McLeod, Associate Director of the U.S. Department of Justice Office of Information and Privacy, sent Plaintiff a final decision on FOIA Appeal No. 08-2274, affirming the FBI's actions on Plaintiff's June 7, 2007 FOIA request (FOIA Request No. 1082822).

21. On or about September 3, 2008, Plaintiff, by and through his attorney Daniel J. Stotter, sent a Request For Reconsideration to Janice Galli McLeod, Associate Director of the U.S. Department of Justice Office of Information and Privacy, noting that the Department of Justice appeal officer may not have received Plaintiff's August 23, 2008 communication prior to the agency's final determination on Plaintiff's FOIA Appeal. Plaintiff also provided a copy of a signed written authorization from Moses White Jr. (Plaintiff's father) expressly authorizing the release of all responsive materials relating to his direct communications and correspondence with the FBI concerning the status of Moses White III.

22. On or about October 9, 2008, Anne D. Work, Deputy Chief Administrative Appeals Staff for the U.S. Department of Justice Office of Information and Privacy sent Plaintiff correspondence indicating that their office was forwarding Plaintiff's communications of August 23, 2008 and September 3, 2008 to the FBI, and that the FBI would be responding to Plaintiff directly.

23. From October 9, 2008, to the date of filing this action, Plaintiff has not received any additional communications or response from the FBI regarding his June 7, 2007 FOIA request as had been indicated by Ms. Work of the Department of Justice, nor has Plaintiff received the release of any additional records (or portions thereof) from the FBI subsequent to that date, nor any information indicating that the agency has ever performed any further review or search of its agency files, or otherwise indicating that the agency would be providing any additional response to his June 7, 2007 FOIA request.

**Plaintiff's June 7, 2007 FOIA Request To The DEA**

24. On or about June 7, 2007, Plaintiff, by and through his attorney Daniel J. Stotter, sent a FOIA request to the DEA's Freedom of Information Operations Unit in Arlington, Virginia, seeking all records and files pertaining to Plaintiff's missing brother, Moses White III, from 1997 to the date of this FOIA request, and expressly requesting the DEA forward this FOIA request to any of its component field offices that may have any records responsive to this records request.

25. On or about July 23, 2007, Katherine L. Myrick, Chief of the Operations Unit of the DEA's FOI / Records Management Section, sent Plaintiff a letter acknowledging the DEA's receipt of Plaintiff's June 7, 2007 FOIA request.

26. On or about October 2, 2007, Katherine L. Myrick, Chief of the Operations Unit of the DEA's FOI / Records Management Section, sent Plaintiff a

letter indicating that his June 7, 2007 FOIA request had been assigned as DEA FOIA Case No. 07-1078-F. This correspondence further indicated that the DEA could neither confirm nor deny the existence of any records regarding Plaintiff's missing brother, Moses White III, unless Plaintiff either (a) provided a signed authorization from Moses White III, or (b) provided proof of the death of Moses White III. This correspondence further indicated that if Plaintiff was dissatisfied with the DEA's response to his FOIA request, he could appeal this decision to the Department of Justice Office of Information & Privacy.

27. On or about October 10, 2007, Plaintiff, by and through his counsel Daniel J Stotter, sent an administrative appeal of the FBI's October 2, 2007 decision to the Department of Justice Office of Information & Privacy.

28. On or about October 18, 2007, Priscilla Jones, Supervisory Administrative Specialist for the Department of Justice Office of Information & Privacy, sent Plaintiff correspondence indicating that his FOIA Appeal had been received on October 16, 2007, and had been assigned as FOIA Appeal Number 08-0134.

29. On or about November 26, 2007, Janice Galli McLeod, Associate Director of the Department of Justice Office of Information & Privacy, sent Plaintiff correspondence indicating that the Department of Justice was affirming



the DEA's response to Plaintiff's June 7, 2007 FOIA request to the DEA, and that if Plaintiff was dissatisfied with the Department's action on this appeal, he could seek judicial review in accordance with 5 U.S.C. 552(a)(4)(B).

## **VII. CLAIMS FOR RELIEF**

### **CLAIM ONE - VIOLATION OF FOIA FAILURE TO PROVIDE ALL NON-EXEMPT RECORDS RESPONSIVE TO PLAINTIFF'S JUNE 7, 2007 FOIA REQUEST TO THE FBI**

30. Plaintiff realleges, as if fully set forth herein, paragraphs 1 - 23 previously set forth herein.

31. Defendant FBI has violated FOIA by failing to provide Plaintiff with all responsive non-exempt records, and all non-exempt portions thereof, requested by Plaintiff in his FOIA request of June 7, 2007 to the FBI.

32. By failing to provide Plaintiff with all records responsive to his FOIA request of June 7, 2007 to the FBI, Defendant has denied Plaintiff's right to this information provided by law under the Freedom of Information Act.

33. Unless enjoined by this Court, Defendant will continue to violate Plaintiff's legal rights to access all of the records that he has requested in Plaintiff's June 7, 2007 FOIA request to the FBI.

34. Plaintiff is directly and adversely affected and aggrieved by Defendant's failure to provide all responsive records and documents to his June 7, 2007 FOIA request to the FBI.

35. Plaintiff has fully exhausted all administrative remedies required by FOIA prior to seeking judicial review of the FBI's failure to provide all responsive records and documents to his June 7, 2007 FOIA request to the FBI.

36. Plaintiff has been required to expend costs and to obtain the services of a law firm, consisting of attorneys, law clerks, and legal assistants, to prosecute this action.

37. Plaintiff is entitled to reasonable costs of litigation, including attorney fees pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

**CLAIM TWO - VIOLATION OF FOIA  
FAILURE TO PROVIDE ALL NON-EXEMPT RECORDS RESPONSIVE TO  
PLAINTIFF'S JUNE 7, 2007 FOIA REQUEST TO THE DEA**

38. Plaintiff realleges, as if fully set forth herein, paragraphs 1 - 13 and paragraphs 24-29 previously set forth herein.

39. Defendant DEA has violated FOIA by failing to provide Plaintiff with all responsive non-exempt records, and all non-exempt portions thereof, requested by Plaintiff in his FOIA request of June 7, 2007 to the DEA.

40. By failing to provide Plaintiff with all records responsive to his FOIA request of June 7, 2007 to the DEA, Defendant has denied Plaintiff's right to this information provided by law under the Freedom of Information Act.

41. Unless enjoined by this Court, Defendant will continue to violate Plaintiff's legal rights to access all of the records that he has requested in Plaintiff's FOIA request of June 7, 2007 to the DEA.

42. Plaintiff is directly and adversely affected and aggrieved by Defendant's failure to provide all responsive records and documents to his FOIA request of June 7, 2007 to the DEA.

43. Plaintiff has fully exhausted all administrative remedies required by FOIA prior to seeking judicial review of the DEA's failure to provide all responsive records and documents to his FOIA request of June 7, 2007 to the DEA.

44. Plaintiff has been required to expend costs and to obtain the services of a law firm, consisting of attorneys, law clerks, and legal assistants, to prosecute this action.

45. Plaintiff is entitled to reasonable costs of litigation, including attorney fees pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

#### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court enter Judgment for Plaintiff providing the following relief:

1. Declare that Defendant FBI has violated FOIA by failing to provide all non-exempt records, and all non-exempt portions thereof, responsive to

Plaintiff's June 7, 2007 FOIA Request to the FBI.

2. Direct by injunction that Defendant FBI immediately provide Plaintiff with all remaining non-exempt documents and records responsive to Plaintiff's June 7, 2007 FOIA request to the FBI.

3. Declare that Defendant DEA has violated FOIA by failing to provide all non-exempt records, and all non-exempt portions thereof, responsive to Plaintiff's June 7, 2007 FOIA Request to the DEA.

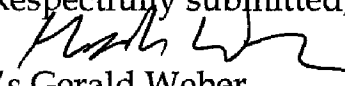
4. Direct by injunction that Defendant DEA immediately provide Plaintiff with all non-exempt documents and records responsive to Plaintiff's June 7, 2007 FOIA request to the DEA.

5. Grant Plaintiff's costs of litigation, including reasonable attorney fees, as provided by FOIA, 5 U.S.C. § 552(a)(4)(E); and,

6. Provide such other relief as the Court deems just and proper.

DATED: This 18<sup>th</sup> day of February, 2009.

Respectfully submitted,

  
/s Gerald Weber

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